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10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 THE BOARD OF TRUSTEES, in their
12 capacities as Trustees of the LABORERS
13 HEALTH AND WELFARE TRUST FUND
14 FOR NORTHERN CALIFORNIA;
15 LABORERS VACATION-HOLIDAY TRUST
16 FUND FOR NORTHERN CALIFORNIA;
17 LABORERS PENSION TRUST FUND FOR
18 NORTHERN CALIFORNIA; and LABORERS
19 TRAINING AND RETRAINING TRUST
20 FUND FOR NORTHERN CALIFORNIA,

No.

**COMPLAINT FOR BREACH OF
CONTRACT, DAMAGES, BREACH OF
FIDUCIARY DUTY, AND AUDIT
(ERISA 29 U.S.C. §1001, ET SEQ., 29
U.S.C. §185)**

21 Plaintiffs,

22 v.

23 CAMROCK CO., INC.,

24 Defendant.

25 Plaintiffs complain of Defendant, and for cause of action allege:

JURISDICTION AND INTRADISTRICT ASSIGNMENT

26 I.

27 This action arises under and is brought pursuant to section 502 of the Employee
28 Retirement Income Security Act, as amended (ERISA) (29 U.S.C. § 1132), and section 301 of the

1 Labor Management Relations Act (LMRA) (29 U.S.C. § 185). Venue properly lies in this district
 2 court since contributions are due and payable in the County of San Francisco. Therefore,
 3 intradistrict venue is proper.

4 **PARTIES**

5 **II.**

6 At all times material herein, Plaintiffs The Board of Trustees were Trustees of the
 7 Laborers Health and Welfare Trust Fund for Northern California (hereinafter “Welfare Fund”);
 8 Laborers Vacation-Holiday Trust Fund for Northern California (hereinafter “Vacation Fund”);
 9 Laborers Pension Trust Fund for Northern California (hereinafter “Pension Fund”); and Laborers
 10 Training and Retraining Trust Fund for Northern California (hereinafter “Training Fund”),
 11 (collectively referred to as “Trust Funds”). At all times material herein, each of the above-named
 12 Trust Funds was, and now is, an employee benefit plan created by a written Trust Agreement
 13 subject to and pursuant to section 302 of the LMRA (29 U.S.C. § 186), and a multi-employer
 14 employee benefit plan within the meaning of sections 3, 4 and 502 of ERISA (29 U.S.C. §§ 1002,
 15 1003 and 1132). Each of the above-named Trust Funds is administered by a Board of Trustees
 16 which may bring this action in the name of the Trust Funds pursuant to the express provisions of
 17 the Trust Agreements. All of the above named Trust Funds and their respective Board of
 18 Trustees shall hereinafter be designated collectively as “Plaintiffs”.

19 **III.**

20 At all times material herein, Camrock Co., Inc. (hereinafter referred to as “Defendant”),
 21 has been an employer within the meaning of section 3(5) and section 515 of ERISA (29 U.S.C.
 22 §§ 002(5), 1145) and an employer in an industry affecting commerce within the meaning of
 23 section 301 of the LMRA (29 U.S.C. § 185).

24 **ALLEGATIONS APPLICABLE TO ALL CLAIMS FOR RELIEF**

25 **IV.**

26 At all relevant times, Defendant was signatory and bound to a written collective
 27 bargaining agreement with the Northern California District Council of Laborers (hereinafter
 28 “Union”), a labor organization within the meaning of section 301 of the Labor Management

1 Relations Act. (29 U.S.C. § 185). Defendant became subject to all the terms and conditions of the
 2 Laborers Master Agreement (hereinafter "Master Agreement") by virtue of signing a
 3 Memorandum Agreement (hereinafter "Memorandum Agreement") with the Union, which
 4 incorporated by reference the Master Agreement. A true and correct copy of said Master
 5 Agreement is attached hereto as **Exhibit "A"**, and a true and correct copy of the Memorandum
 6 Agreement is attached hereto as **Exhibit "B"**, all of which are incorporated by reference herein.
 7 The Master Agreement by its terms incorporates the various Trust Agreements establishing each
 8 of the Trust Funds. Hereinafter, the Master Agreement, Memorandum Agreement, and Trust
 9 Agreements are collectively referred to as the "Agreements." By said Master Agreement,
 10 Defendant promised that it would contribute and pay to Plaintiffs the hourly amounts required by
 11 said Agreements for each hour paid for or worked by any of its employees who performed any
 12 work covered by said Agreements, and that it would be subject to and bound by all of the terms,
 13 provisions and conditions of the Trust Agreements as incorporated by the terms of the Master
 14 Agreement.

15 V.

16 The above-mentioned Agreements provide for prompt payment of all employer
 17 contributions to the various Trust Funds and provide for liquidated damages, not as a penalty but
 18 as a reasonable attempt to provide for payments to cover the damages incurred by the Trust
 19 Funds, in the event of a breach by the employer, where it would have been impracticable or
 20 extremely difficult to ascertain the Trust Funds' losses at the time the Agreement was negotiated.

21 VI.

22 Said Agreements provide for prompt payment of all delinquent contributions to the
 23 various Trust Funds, and provide for the payment of interest on all delinquent contributions,
 24 attorneys' fees, and other collection costs, and for the audit of the signatory employer or
 25 employers' books and records in order to permit the Plaintiffs to ascertain whether all fringe
 26 benefit contributions have been timely paid as required by the applicable Agreements and law.

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FIRST CLAIM FOR RELIEF
(BREACH OF CONTRACT)

VII.

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

VIII.

Defendant has failed, neglected, or refused to make timely fringe benefit contributions as required by the Agreements, and there is now due and owing and unpaid to the Trust Funds liquidated damages and interest in the sum estimated to be at least \$11,590.05 for contributions paid but paid late, for the periods of May 2010 through December 2010, and April 2011 through August 2012; \$8,782.26 for contributions reported but not paid, plus liquidated damages and interest for unpaid contributions in the sum estimated to be at least \$3,281.80, for the period of May 2012 and June 2012.

IX

Plaintiffs are the intended third-party beneficiaries of the Agreements, but Trust Fund contribution delinquencies are excluded from the arbitration provisions of the Agreements.

X

Plaintiffs have complied with all conditions on their part to be performed under the terms of the applicable Agreements.

XI

Plaintiffs are entitled to reasonable attorneys' fees, interest, and other reasonable expenses incurred in connection with this matter due to Defendant's failure and refusal to pay all fringe benefit contributions due and owing pursuant to the terms of the Agreements, and ERISA section 502(g)(2) (29 U.S.C. § 1132(g)(2)).

SECOND CLAIM FOR RELIEF
(ACTUAL DAMAGES FOR BREACH OF CONTRACT)

XII.

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

XIII.

Defendant has failed, neglected and refused to make timely fringe benefit contributions as

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1 required by the Agreements, and has caused Plaintiffs actual damages in an amount to be proven
2 at trial.

3 **THIRD CLAIM FOR RELIEF**
4 **(DAMAGES AND EQUITABLE RELIEF FOR BREACH OF FIDUCIARY DUTY)**
5 XIV.

6 Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

7 XV.

8 Defendant has failed, neglected or refused to make timely fringe benefit contributions to
9 the Trust Funds as required by the applicable Master Agreements and Trust Agreements.

10 XVI.

11 Defendant's neglect or refusal to make timely fringe benefit contributions and reports
12 pursuant to the terms of the above-mentioned Agreements constitutes a violation of ERISA
13 section 515 (29 U.S.C. § 1145).

14 XVII.

15 Defendant, in agreeing to the terms and conditions of the aforementioned Trust
16 Agreements, assumed a fiduciary duty to Plaintiffs, which required Defendant to submit timely
17 and accurate reports of hours worked or amounts due, together with payments to the Trust Funds.
18 Defendant exercised control over any contributions due, which are assets of the Trust Funds, and
19 Defendant was and is a fiduciary as defined by ERISA section 3(21) (29 U.S.C. § 1002(21)).

20 XVIII.

21 The actions of Defendant complained of herein constitute violations of fiduciary duties as
22 defined by ERISA, 29 U.S.C. §§ 1001, *et seq.*

23 XIX.

24 Unless enjoined by this Court, Defendant will continue to fail, neglect, or refuse to remit
25 appropriate fringe benefit contributions to the Trust Funds and thereby cause Plaintiffs irreparable
26 harm for which there exists no adequate remedy at law.

27 **FOURTH CLAIM FOR RELIEF**
28 **(AUDIT)**
XXVI.

Plaintiffs incorporate and reallege by reference all the allegations stated hereinabove.

XXVII.

Plaintiffs believe that additional amounts may be due and owing and also pray for an audit for the period May 2010 through the last complete quarter to determine same.

WHEREFORE, Plaintiffs pray judgment against Defendant Camrock Co., Inc., as follows:

1. That Defendant be ordered to pay contributions to the Laborers' Trust Funds in the amount of \$8,782.26, plus interest thereon;

2. That Defendant be ordered to pay liquidated damages and interest to the Laborers' Trust Funds in the amount of \$11,590.05 for contributions paid but paid late, and \$3,281.80 for contributions reported but not paid, plus interest thereon;

3. That Defendant be ordered to pay actual damages according to proof;

4. That this Court issue an Order directing and permanently enjoining Defendant to timely submit to Plaintiffs all reports and contributions due and owing by Defendant plus interest, liquidated damages, attorneys' fees, and costs as provided in ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

5. That this Court issue an Order permanently enjoining Defendant, for so long as it remains obligated to contribute to the Trust Funds, from failing, neglecting, or refusing to timely submit required monthly contributions reports and payments as required by the terms of the Agreements and ERISA sections 502(a)(3) and (g)(2) (29 U.S.C. § 1132(a)(3), (g)(2));

6. That Defendant be ordered to pay attorneys' fees;

7. That Defendant be ordered to submit to an audit for the period May 2010 through the last completed quarter between Plaintiffs and Defendant;

8. That Defendant be ordered to pay costs of suit herein;

9. That this Court grant such further relief as this Court deems just and proper and;

10. That this Court retain jurisdiction of this matter to enforce the Order compelling an

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1 Audit and payment of all amounts found due and owing.

2 Dated: June 9, 2014

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

4 By: /S/ CONCEPCION E. LOZANO-BATISTA
5 CONCEPCIÓN E. LOZANO-BATISTA
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